

**REMARKS/ARGUMENTS**

Claims 1, 2, 3 and 5 remain in the application. Reconsideration of this application is respectfully requested.

**Claim Rejection - 35 U.S.C. § 103:**

*Claims 1-3 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Helms (US Patent 5,666,426) in view of Cooper(US Patent 5,790,671).*

Claim 1 recites:

A method for controlling volume in a two-way communication device, comprising:  
detecting a change in manual volume setting;  
measuring current background audio level via a microphone of the two-way radio;  
determining a relationship between the current background audio level and the volume setting;  
establishing the relationship as a desired volume level to be maintained;  
sensing a subsequent change in the manual volume setting;  
monitoring subsequent background audio level alone by switchably engaging the microphone of the two-way radio in response to the subsequent change in the manual volume setting;  
comparing the current background level to the subsequent background level;  
determining whether a change in background level occurred; and  
automatically adjusting volume of a speaker of the two-way radio based on the relationship.

Applicant has amended independent claims 1, 2, 3 and 5 to more clearly define the invention. Claim 1 now recites: “monitoring subsequent background audio level alone by switchably engaging the microphone of the two-way radio in response to the subsequent change in the manual volume setting.” Claim 2 now recites: “monitoring only subsequent background

audio levels by switching in a microphone when a change in manual volume control setting occurs.” Claim 3 now recites: “a microphone switchably coupled to the controller for monitoring only background noise levels in response to changes in the manual volume control.” Claim 5 now recites: “a microphone coupled to the controller via a switch, the microphone sampling subsequent background audio levels alone in response to a subsequent change to the manual volume control being sensed by the intelligent AVC and the intelligent AVC engaging the switch.” No new matter has been added. Support for this amendment is found throughout the specification and FIG. 2. For example FIG. 2 clearly shows a switch 216 for switchably sensing background noise via microphone 214.

The Helms reference teaches measuring an amplified output signal (the desired signal) and the background signal simultaneously. The Helms reference requires measuring both the desired (amplified output) signal and the background signal. As seen in FIG. 1, steps 32, 34 and col. 4, lines 1-7, as well as the independent claims, the Helms reference samples not only the background noise but also the amplified output signal simultaneously. This is done out of necessity, since the signal that Helms is controlling is constantly playing out, such as from a car radio.

The Helms technique is not optimal, particularly in the case of two-way radios (claims 1 and 5), as the Helms technique can not sense background noise alone. All of Applicant’s claims (1, 2, 3 and 5) are directed to measuring the background levels only – there is no recitation or requirement of measuring the desired/amplified output signal. The Helms reference is not applicable to the two-way environment, specifically called out in claims 1 and 5. The very nature of a two-way radio is that the speaker is turned OFF when the microphone is active. Hence, when the microphone samples the background audio levels, audio from the

speaker is not picked up. Applicants sample only the background noise - and not what is coming out of the speaker.

Additionally, the Examiner concedes, on page 4 of the Office Action, that Helms fails to disclose switchably engaging a microphone, but argues that Cooper discloses switchably engaging a microphone channel with a change in gain (col. 4, lines 21-32). However, Cooper specifically recites: “[t]he ambient noise level checked in step S101 is determined in accordance with either the volume setting (determined by the position of the volume knob) or a direct sampling of ambient noise using digitized microphone audio input 22. Claim 1 of Applicant’s invention recites “monitoring subsequent background audio level alone by switchably engaging a microphone of the two-way radio in response to the subsequent change in the manual volume setting. There is no teaching or suggestion in Cooper of switchably engaging a microphone within the cited passage or elsewhere in the specification – and no switch is shown.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The Applicants believe that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicants.

In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicant’s attorney or agent at the number indicated below so that the prosecution of the present case may be advanced by the clarification of any continuing rejection.

The Commissioner is hereby authorized to charge Deposit Account 502117, Motorola, Inc, with any fees which may be required in the prosecution of this application.

Respectfully submitted,

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